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FILED
JAN 10 1964
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 742

HARRY KAISER and SUSAN KAISER,
Defendants-Petitioners,

vs.

THE STATE OF NEW JERSEY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT, APPELLATE DIVISION, OF THE STATE OF NEW JERSEY.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT, APPELLATE DIVISION, OF THE STATE OF NEW JERSEY.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT, APPELLATE DIVISION, OF THE STATE OF NEW JERSEY.

Petitioners, Harry J. Kaiser and Susan Kaiser, pray that a writ of certiorari issue to review the judgment of the Superior Court, Appellate Division, of the State of New Jersey entered on May 14, 1962, affirming the convictions of Petitioners, in the Bergen County Court, Law Division on May 18, 1961 and the judgment of the Superior Court, Appellate Division, of the State of New Jersey, entered on July 17, 1963, affirming the denial by the Bergen County Court, Law Division, of Petitioners' motions to vacate the judgments of convictions and for a new trial, rendered December 7, 1962.

Opinions Below.

The opinion of the Superior Court, Appellate Division, of the State of New Jersey, affirming the convictions of the defendants-petitioners is reported in 74 N. J. Super. 257, 181 A. 2d 184 and is printed in Appendix "A" hereto.

The opinion of the Superior Court, Appellate Division, of the State of New Jersey, affirming the denial by the Bergen County Court, Law Division, of defendants-petitioners' motions to vacate the judgments of conviction and for a new trial is reported in 80 N. J. Super. 176, 193 A. 2d 270 and is printed in Appendix "B" hereto.

The oral opinion of the Bergen County Court, Law Division, Galanti, Judge is unreported and is printed in Appendix "C".

Jurisdiction.

The judgment of the Superior Court, Appellate Division of the State of New Jersey, affirming the convictions of Petitioners, was entered on June 23rd, 1962. Petition for Certification was filed with the New Jersey Supreme Court which was denied on July 17, 1962.

The judgment of the Superior Court, Appellate Division of the State of New Jersey, affirming the denial by the Bergen County Court, Law Division of Petitioners' motions to vacate the judgments of convictions and for a new trial, was entered on July 17, 1963. Petition for Certification was filed with the New Jersey Supreme Court which was denied on November 26th, 1963.

The statutory provisions conferring jurisdiction on this Court to review the judgments of the Superior Court, Appellate Division, of the State of New Jersey is Title 28

U. S. C. Section 1257(3), since the petitioners are claiming rights, privileges or immunities under the Constitution of the United States.

Questions Presented.

1. Did the admission into evidence at the trial of the Petitioners of articles seized under a search warrant which the State now concedes was issued on an application which "falls short of the standards recently enunciated by [the New Jersey] Supreme Court" in a pre-Mapp search seizure, trial and conviction, violate the Constitutional rights of the Petitioners under the IVth, Vth and XIVth Amendments of the United States Constitution?

2. Did the failure to object at a pre-Mapp trial to the introduction into evidence of articles which were the product of an illegal search and seizure, resulting from a search warrant now concededly issued on a defective application, bar the Petitioners from later raising the violation of their Constitutional rights under the IVth, Vth and XIVth Amendments of the United States Constitution in the State Court by application to vacate the judgments of convictions and to grant a new trial after *Mapp* v. *Ohio*, 367 U. S. 643, was decided?

3. Did the failure of Petitioners to urge on the argument of their appeals before the Superior Court, Appellate Division, from their convictions and in their Petition for Certification to the Supreme Court of New Jersey, as grounds for the reversal of their convictions, the illegality of the search, seizure and introduction into evidence of the seized articles in violation of their Federal Constitutional rights under the IVth, Vth and XIVth Amendments, amount to a waiver of their constitutional rights in the circumstances